

# United States District Court

## WESTERN DISTRICT OF MICHIGAN

**UNITED STATES OF AMERICA**

v.

**KIMATHI SMITH****ORDER OF DETENTION PENDING  
REVOCATION HEARING**Case Number: **1:00-CR-100**

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending revocation hearing in this case.

**Part I - Findings of Fact**

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- ☐ an offense for which the maximum sentence is life imprisonment or death.
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

**Alternate Findings (A)**

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- ☐ under 18 U.S.C. §924(c).
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

**Alternate Findings (B)**

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Following his prison term for bank robbery, defendant was placed at CAP, but had his supervised release revoked on December 13, 2006 for absconding from that facility. He was returned to CAP in late 2007 and absconded again on January 4, 2008. He turned himself in a week later. Although he was employed (by the business owned by his girlfriend's mother), he did not work the week he was in escape status, falsely telling his employer that CAP had given him the week off. Defendant also indicates (continued on attachment)

**Part II - Written Statement of Reasons for Detention**

Defendant has failed to show by clear and convincing evidence that there are conditions that will assure his appearance for future court proceedings. This is the second time he has absconded from the halfway house and, while he eventually turned himself in, he took his time in doing so. It is not up to the defendant to determine when he will abide by court-ordered placement. Where the defendant faces a potential return to prison, which is what happened last time he absconded from a half-way house, the court has no assurance that he will choose to follow the court's (continued on attachment)

**Part III - Directions Regarding Detention**

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: January 17, 2008/s/ Hugh W. Brenneman, Jr.

Signature of Judicial Officer

Hugh W. Brenneman, Jr., United States Magistrate Judge

Name and Title of Judicial Officer

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**Alternate Findings (B) - (continued)**

through counsel that he spoke to or left messages with the Probation Office on a number of occasions during this week trying to arrange to turn himself in. The sworn testimony of the probation officer directly refutes several of these representations. Defendant represents that he escaped from the halfway house because of a previous assault he had suffered outside the premises, approximately a block and a half away, on an earlier occasion.

**Part II - Written Statement of Reasons for Detention - (continued)**

order to return for a revocation hearing and possible sentencing if he is released from custody.